

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Maude J. Prey :  
d/b/a Prey's Citgo Service : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 3/1/74 - 5/31/77. :

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by mail upon Maude J. Prey, d/b/a Prey's Citgo Service, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maude J. Prey  
d/b/a Prey's Citgo Service  
42-46 East Main St.  
Port Jervis, NY 12771

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
17th day of October, 1980.

Esterah A. Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 17, 1980

Maude J. Prey  
d/b/a Prey's Citgo Service  
42-46 East Main St.  
Port Jervis, NY 12771

Dear Ms. Prey:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MAUDE J. PREY	:	DECISION
d/b/a PREY'S CITGO SERVICE	:	
	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for the	:	
Period March 1, 1974 through May 31, 1977.	:	

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Petitioner, Maude J. Prey d/b/a Prey's Citgo Service, 42-46 East Main Street, Port Jervis, New York 12771, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1974 through May 31, 1977 (File No. 22289).

On March 25, 1980, petitioner, Maude J. Prey d/b/a Prey's Citgo Service, advised the State Tax Commission, in writing, that she desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether the results of a field audit performed by the Audit Division properly reflect petitioner's additional sales tax liability.

FINDINGS OF FACT

1. On March 14, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Maude J. Prey d/b/a Prey's Citgo Service for the period March 1, 1974 through May 31, 1977 in the amount of \$2,081.56 tax plus penalties and interest.

2. Petitioner executed a consent extending the period of limitation for assessment to June 20, 1978.

3. Petitioner's business activity consisted of the sale of gasoline, diesel fuel, tires, batteries, accessories, parts and repair labor. Sales of gasoline and diesel fuel were reported by petitioner for the period March 1, 1974 through September 30, 1975. As of October 1, 1975, the sales of gasoline and diesel fuel were reported by the lessor of the service station.

4. On audit, the Audit Division accepted gasoline and diesel fuel sales as reported by petitioner. It found that purchases on the 1976 Federal Income Tax Return filed exceeded purchases on petitioner's books by 42 percent. An examination of the prior year's Federal return also disclosed an under-statement of purchases on the books. Since the prior year's purchases included gasoline and diesel fuel, the Audit Division increased purchases of tires, batteries, accessories and parts on the petitioner's books by the 42 percent, as found for 1976, for the period March 1, 1974 through February 28, 1977.

Sales invoices were not available for the audit period; therefore, the Audit Division used the current month of August, 1977 for its analysis of purchases and sales. It determined that 35.8 percent of petitioner's purchases were tires, batteries and accessories and 64.2 percent were repair parts. A review of sales invoices for the month disclosed a markup of 16.8 percent on tires, batteries and accessories and a markup of 43.7 percent on repair parts. Labor charges for the test period were determined to be 72.2 percent of repair parts sales. Upon application of the appropriate markups to the increased purchases for the period March 1, 1974 through February 28, 1977, the Audit Division determined additional taxable sales including labor charges to be 26.48 percent of reported taxable sales. The ratio of additional taxable sales was applied to the taxable sales reported for the period March 1, 1977 through May 31, 1977. The Audit Division determined additional taxable sales of \$52,039.00 for the audit period and the tax due thereon of \$2,081.56.

Petitioner's books and records were not sufficient to verify the exact amount of taxable sales.

5. Petitioner disputed the results of the audit contending that some sales were made at a discount and that repairs were often made for a flat fee including parts, material and labor. Petitioner failed to submit any evidence to support the contentions or to show what effect they would have on the audit results.

6. Petitioner offered no evidence to show why the purchases on the Federal tax returns were higher than those recorded on the books.

7. Petitioner offered no evidence to show that reasonable cause existed for not paying over any tax asserted due.

CONCLUSIONS

A. That in the absence of substantiating records, the audit performed by the Audit Division was proper and in accordance with section 1138(a) of the Tax Law.


B. That the petition of Maude J. Prey d/b/a Prey's Citgo Service is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due as issued March 14, 1978 is sustained.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER